

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No. 6,312,349
Issue Date: November 6, 2001
Appl. No.: 09/430,756
Applicant(s): T. Sanford Roberts
Filed: October 29, 1999
Title: SPORTS TRAINING DEVICE

Confirmation No.: 7710

Docket No.: 059952/420058
Customer No.: 00826

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR 1.378(b)

In response to the Dismissal of the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee, as filed June 19, 2012, Petitioner requests reconsideration of the findings. In particular, Petitioner respectfully submits that contrary to the Dismissal's assertion, the evidence proffered does not suggest that the maintenance fee was not paid due to the lack of diligence on the part of some combination of the Petitioner and/or Mr. Dickman, the Petitioner's representative.

With regard to the Petitioner's diligence, Petitioner respectfully submits that Statement in Support of the Petition of June 19, 2012 evidenced that Petitioner fully delegated the maintenance fee payment responsibilities to his representative, Mr. Dickman. This was evidenced at least by Petitioner denoting Mr. Dickman's office as the sole address for maintenance fee notice and reminder purposes, and further by Petitioner receiving correspondence from Mr. Dickman reminding of the upcoming first maintenance fee payment, followed still further by the timely payment of the fee. Accordingly, Petitioner respectfully asserts that he fully delegated maintenance fee payment responsibilities to Mr. Dickman, which shifts the inquiry from whether the Petitioner acted reasonably to whether his representative, Mr. Dickman, acted reasonably. See In re Patent No. 5,305,976, 2005 WL 5393903 at *3.

Turning thus to the diligence of Petitioner's representative, Mr. Dickman, Petitioner respectfully submits that the Supporting Statement of June 19, 2012 provided the entirety of the evidence that is available to Petitioner regarding Mr. Dickman's docketing and notification system. At least because Mr. Dickman died in 2005, Petitioner has absolutely no way of determining the nature of his docketing and notification system, beyond that which is suggested by Mr. Dickman's timely notification to Petitioner to pay the first maintenance fee. Accordingly, Petitioner respectfully asserts that requiring further evidence of Mr. Dickman's docketing and notification system creates an unworkable standard, whereby virtually no instances of unavoidable delay could exist as a result of the untimely death of a patentee's representative. Arguably, such a result is neither envisioned nor supported by the statutory language providing for acceptance of unavoidably delayed maintenance fee payments.

Still further, Petitioner respectfully asserts the evidence submitted in the Supporting Statement of June 19, 2012 sufficiently illustrates that Mr. Dickman diligently established a notification and docketing system, as a reasonably prudent person would have done. If nothing else, the fact that Petitioner was promptly notified of the first maintenance fee and such was paid in a timely fashion confirms that Mr. Dickman's notification and docketing system was competently structured. And while Petitioner has no knowledge, and still further no way of acquiring knowledge regarding preparations made by Mr. Dickman in the event of his untimely death, Petitioner respectfully submits that a lack of subsequent notification does not demonstrate a lack of diligence on the part of Mr. Dickman. Indeed, to assume otherwise would create an unworkable standard, whereby perfect systems are required, as opposed to reasonably diligent systems, as would be adopted by a reasonably prudent person. Notably, under such a "perfect system" standard, virtually no patentee could successfully petition for unavoidably delayed payment where the representative's notification and docketing system, entirely unbeknownst to the patentee, fails following the representative's untimely death. Arguably, such a result is neither envisioned nor supported by the statutory language providing for acceptance of unavoidably delayed maintenance fee payments.

Lastly, Petitioner respectfully asserts that reasonably prudent patentees, after having fully delegated maintenance fee payment responsibilities to their reasonably diligent and competent representatives, do not have reason to routinely or regularly engage in subsequent

correspondence with their representative. Indeed, where patentees such as the Petitioner are unaware of subsequent maintenance fee deadlines, having thus delegated the responsibility therefor to their duly appointed representative, the responsibility for initiating communication rests solely with the representative. Notably, as was the case here, oftentimes the first correspondence initiated by a patentee to his or her representative occurs upon the patentee locating a potentially infringing device, in which instance the patentee discovers the patent expiration. Accordingly, Petitioner respectfully submits that, upon duly delegating responsibility to Mr. Dickman, Petitioner acted with diligence comparable to that of a reasonably prudent person, both prior to discover of the patent expiration and thereafter, as evidenced by submittal of the Petition approximately one month following discovery.

In view of all of the above, Petitioner respectfully submits that the entire delay in payment of the maintenance fee was unavoidable because Petitioner and Mr. Dickman both acted in a diligent manner comparable to that which would have been taken by a reasonably prudent person.

It is not believed that extensions of time or fees for are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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